(15G)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2335 OF 2003

PETITIONER: Umesh Sonwani, Aged about 30 years,
S/o Shri Kartik Ram Sonwani,
R/o Village: Bhakhara,
Teh. Kurud, Distt. Dhamtari (C.G.)

Versus

RESPONDENTS:

1) The State of Chhattisgarh
Through: Secretary,
Panchayat Raj Department,
D.K.S. Bhawan, Raipur (C.G.)

2) The Collector, Dhamtari (C.G.)

3) The Sub Divisional Officer,
Dhamtari, Distt. Dhamtari (C.G.)

4) Jhamman Lal Sahu, Up-sarpanch,
Gram Panchayat Bhakhara,
Teh. Kurud, Distt. Dhamtari (C.G.)

POST FOR ORDER ON 29th August, 2003

Sd/-
L.C. Bhadoo
Judge

29 August, 2003

(57)

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Present: -

Shri Parag Kotecha, Advocate: For the petitioner

Shri Ranbir Singh, Govt. Advocate: For the State/respondents 1, 2 & 3

Before: Hon'ble Shri L.C. Bhadoo, J

O R D E R

(Passed on 29th August, 2003)

1. By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 25.07.2003 passed by the Collector, Dhamtari (respondent No.2), in case No.25-A/89(9)/ 2002-03 by which the learned Collector had dismissed the appeal filed by the petitioner against the order dated 3rd June, 2003, passed by the Sub Divisional Officer, Distt. Dhamtari (respondent No.3) under which the learned Sub Divisional Officer passed an order under Section 40 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (hereinafter

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referred to as 'the Adhiniyam'), removing the petitioner from the post of the Sarpanch.

2. The petitioner's petition is that the petitioner was duly elected Sarpanch of Gram Panchayat, Bhakhra. The Panchayat consists of 20 members. Few persons along with respondent No.4 made a complaint against the petitioner. After receiving the complaint an enquiry committee was constituted by respondent No.3 and respondent No.4 was appointed as a member of the said committee. The said committee made a report after enquiring into the allegations against the petitioner (Annexure P-1). After receiving the report, respondent No.3 issued a show cause notice to the petitioner under Section 40 (1) of the Adhiniyam. The petitioner submitted his reply to the show cause. Respondent No.3 ignoring the objection raised by the petitioner passed final order on 03.06.2003 and removed the petitioner from the post of Sarpanch against which the petitioner filed an appeal before the Collector, Dhamtari (respondent No.2). The learned Collector dismissed the appeal under order Annexure P-5. The actions of respondents 2 & 3 are illegal, arbitrary and contrary to law and against the principles of natural justice. The Sub Divisional Officer ought to have initiated proceedings against all the Panchas including Secretary instead of initiating proceedings against the petitioner mainly on the ground that money more than Rs.2,500/- was kept by the petitioner instead of depositing the same in the Bank though it is not a case of misappropriation of money. Therefore, the orders of the learned Sub Divisional Officer and the Collector be set aside.

3. I have heard the learned counsel for the petitioner and the learned Govt. Advocate for the State/respondents 1, 2 & 3.

4. The main grievance of the learned counsel for the petitioner is that respondent No.4 himself made a complaint along with some other persons against the petitioner and respondent No.3 made him a member

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of the enquiry committee which is against the principles of natural justice, therefore, whole enquiry stands vitiated. The second grievance of the counsel for the petitioner is that the enquiry committee as well as the S.D.O. reached the conclusion that irregularities were committed not only by the petitioner, but also the Secretary of the Panchayat as well as other Panchas were also responsible, therefore taking action only against the petitioner excluding other persons is also bad.

5. It is settled law that in the jurisdiction under Article 227 of the Constitution of India this Court cannot sit as an appellate Court and decide the issues as an appellate Court. Under Article 227 of the Constitution of India, this Court can interfere with the finding of the impugned order only when the principles of natural justice are violated or the enquiry was not conducted in accordance with the provisions of law and rules or when statutory rules are not followed or if the finding of the concerned authority contrary to law. In this connection, it will be beneficial if we look into Section 40 of the Adhiniyam, under which the petitioner has been removed from the post of Sarpanch. Section 40 of the Adhiniyam lays down that

> *"The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer—*
>
> *(a) if he has been guilty of misconduct in the discharge of his duties; or*
>
> *(b) if his continuance in office is undesirable in the interest of the public:*
>
> *Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office."*

In the *explanation*, the word 'misconduct' has also been defined.

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6. In this case, there is no allegation that the petitioner was not given any opportunity, rather it is on record that after conducting the enquiry, a show cause notice was issued to the petitioner and he was given opportunity for hearing. Moreover, during the enquiry also whole time the petitioner was present and he was given opportunity to cross-examine the witnesses and produce his own evidence. So, there is no procedural flaw in the inquiry. The only grievance of the petitioner is that respondent No.4 was himself signatory to the complaint upon which the enquiry was instituted. Therefore, he could not have been made the member of the enquiry committee.

7. In this connection, if we go through the record, a committee consisting of four members was constituted by the competent authority of which Mr. J.P. Shukla, Panchayat & Social Education Organizer, Dhamtari, was nominated as Convener of the Committee and other members were Mr. Mohan Singh Gaur, Mr. Dashrath Singh Gaur and Mr. Jhamman Sahu (respondent No.4). Therefore, in this enquiry, respondent No.4 was not the only person who conducted the enquiry. Moreover, Mr. J.P. Shukla was the Convener under whose supervision the enquiry was conducted and the complaint upon which the enquiry was instituted, respondent No.4 was only a signatory to the complaint. Moreover, there is allegation of the petitioner that respondent No.4 was in a position to influence the committee in order to pass an illegal order or an order contrary to the record. A perusal of the enquiry committee report, the finding of the S.D.O. and the finding of the Collector reveal that full opportunity was given to the petitioner to cross-examine the witnesses based on the record and the committee not only examined the various witnesses but also perused the record and the finding of the committee is based on the evidence of the witnesses which was examined in the presence of the witnesses. Moreover, the said report of the committee was placed before the Gram Sabha, the Gram Sabha with a thumping majority approved the report, and in that report, the

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allegation against the petitioner about financial irregularities and other charges were approved. The petitioner got executed the work without getting it approved from the Panchayat and huge amount he kept with him without depositing the same in the Panchayat account. Without approval of the Panchayat, the petitioner withdrew the amount of Rs.21,953/- and he also got executed certain works without getting the approval of the Panchayat. Apart from that amount of the monthly income of the Panchayat which the petitioner received was not deposited in the Panchayat account. In para-13 of the finding of the S.D.O., it has been held that a huge amount was kept by the petitioner with him which was contrary to the rules. Out of ten charges, charges 1, 4, 5, 8 & 9 were found proved by the committed against the petitioner. Therefore, the finding of the committee is more or less based on the record and also on the basis of the evidence adduced by various witnesses.

8. In view of the situation, merely on the ground that respondent No.4 was signatory to the complaint and he was a member of the committee, the enquiry cannot be considered as vitiated, because the petitioner has not been able to establish that on account of any bias of respondent No.4, the enquiry was vitiated. As far as the question that apart from the petitioner, the Secretary and other Panchas were also responsible for the said irregularities, it is true that the then Secretary and some Panchas were also found responsible for the financial irregularities and they were party to the irregularities. The learned S.D.O. ought to have taken action and initiated enquiry against those persons also, but it is unfortunate that the S.D.O. has not taken any action against them. But only on that ground, the petitioner cannot escape from the responsibility for which he was a party. Moreover, being a Sarpanch and head of the Panchayat, he was in charge of the whole affairs and therefore, more responsibility rests on his shoulders and he should not have allowed such irregularities to happen. On the

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contrary, he became party to that. Therefore, on this ground also the petitioner is not entitled for any relief.

9. In view of the above, I do not find any force in this petition as orders of the S.D.O. as well as the Collector are based on reasonings, report of the committee and the record. There is no flaw in any manner in the aforesaid orders. Therefore, the writ petition is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Seema

5/6/03